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California Integrated Waste Management Board

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Arnold Schwarzenegger
Governor

September 19, 2005

Patrick T. Brewer
Director, Government Affairs
Lexmark International, Inc.
740 West New Circle Road
Lexington, Kentucky 40550

Dear Mr. Brewer and Ms. Jackson:

Thank you for your response to our letter dated August 8, 2005, regarding an effort by the California Integrated Waste Management Board (CIWMB) and the Department of General Services (DGS) to establish an environmentally preferable product (EPP) standard for printer and duplication cartridges. Your comments and suggestions were informative and helpful. In your letter dated August 26, 2005, you offered a number of suggestions. In an effort to continue our dialogue, I have the following responses.

I. Tier 1 Definition

It is not our intention in Tier 1 to exclude legitimate business methods for the collection, recycling, and reuse of empty cartridges by industry participants. On the contrary, we applaud the efforts by any manufacturer, distributor, wholesaler, retailer, or remanufacturer that establishes a system of collection, contractual or voluntary, for the purpose of recycling or remanufacturing empty cartridges. In promoting the EPP standard, it is our intention to increase recycling and remanufacturing of cartridges. Tier 1 is an essential element of the proposed EPP standard for printer and duplication cartridges; however your comments have made us aware of its previous shortcomings. Therefore, we propose to modify the language of Tier 1 by including subdivision (b) of Section 12156 of the California Public Contract Code (PCC).

As stated in our letter to the Interested Parties dated August 8, 2005, the Tier 1 benchmark included the language, "the manufacturer shall not prevent, through specific design features or manufacturing processes, print cartridges from being reused". We acknowledge that there are instances where design features are incorporated into a cartridge that enables it to perform certain functions such as monitoring of toner usage. To the extent that such design features may exclude a cartridge from EPP designation, and in keeping with our goal of easy and effective benchmarks to readily identify EPP cartridges, we propose to omit this sentence from the language of Tier 1.

California Environmental Protection Agency

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II. Proposed Scope of the Standard

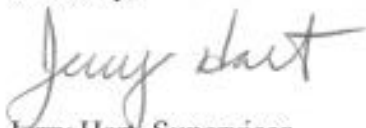
The scope of the standard should include those products that California state or local agencies purchase on contract. Currently, these products include printer, multifunctional device (MFD), and duplication cartridges, such as toner and inkjet cartridges. These cartridges consist of both black and colored cartridges. However, since the functional components of inkjet cartridges are technologically very different from toner cartridges, and toner cartridges constitute a considerably greater proportion of cartridges that the state purchases on contract, it is prudent to develop this EPP standard specifically for black and colored toner cartridges only. While we acknowledge that there are differences in design and specification between black and colored toner cartridges, we feel that there are sufficient similarities between the containers of black and colored cartridges to warrant the inclusion of both in this EPP standard.

Thank you for sending me the opinion from the Ninth Circuit Court of Appeals regarding Lexmark and Arizona Cartridge Remanufacturers Association.

I would like to thank you again for responding to our letter with helpful comments and suggestions. I look forward to continuing our dialogue and working together towards establishing an environmentally preferable standard for printer and duplication cartridges. We will be sending out our next letter to the interested parties on September 19, 2005, and would like to encourage you to continue your assistance in this effort.

If you have any questions or comments, please contact Mr. Fareed Ferhut at fferhut@ciwmb.ca.gov or (916) 341-6482.

Sincerely,



Jerry Hart, Supervisor
Buy Recycled Section

Cc: Patty Wohl, CIWMB
Bill Orr, CIWMB
Fareed Ferhut, CIWMB
Gene Erbin